

REMARKS

The Office Action has required restriction, under 35 U.S.C. §121, to different alleged species of the invention. In making the restriction requirement, the Office Action alleges that Species I “is described in claim 1” and “is directed to a semiconductor device that has one FET transistor with fin structure” and Species II “is described in claim 17” and “is directed to a semiconductor device that has a N fin FET and a P fin FET.” The Office Action requires Applicants to elect a single disclosed species for prosecution on the merits, with the election including an identification of the species and a listing of all claims readable thereon. Applicants respectfully traverse and submit that the Office Action has made an improper restriction requirement.

As noted in M.P.E.P. § 806.04(e), claims are definitions of inventions, and are never species. Species are always the specifically different embodiments of the invention. M.P.E.P. § 806.04(e). The Office Action has alleged that Species I corresponds to claim 1 and Species II corresponds to claim 17. However, as already noted, claims are never species and the Office Action's designation of these claims as species is improper.

Additionally, to be restricted to different species, claims must be mutually exclusive. See M.P.E.P. § 806.04(f). The “general test as to when claims are restricted, respectively, to different species is the fact that one claim recites limitations which under the disclosure are found in a first species but not in a second, while a second claim recites limitations disclosed only for the second species and not the first.” M.P.E.P. § 806.04(f). Applicants submit that independent claims 1, 8 and 17 correspond to the embodiment disclosed in FIG. 8 of the present application. Thus, the different features recited in claims 1, 8 and 17 are present in the embodiment (i.e., the species) disclosed with respect to FIG. 8. Therefore, there are no

features recited in any of claims 1, 8 or 17 that are disclosed with respect to any other disclosed embodiment of the invention. Claims 1 and 17, designated as Species I and II by the Office Action, are not mutually exclusive and, therefore, the Office Action's species restriction requirement is improper.

In view of the restriction requirement, Applicants elect the species of FIG. 8 of the present application. Claims 1-20 read on the species of FIG. 8.

In view of the foregoing remarks, Applicants respectfully request the Examiner's reconsideration of this application, and the timely allowance of the elected claims. To the extent necessary, a petition for an extension of time under 37 CFR § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-1070 and please credit any excess fees to such deposit account.

Respectfully submitted,



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